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UNITED STATES PATENT AND TRADEMARK OFFICE
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Henry M. Feiereisen, LLC
350 Fifth Avenue
Suite 4714
New York, NY 10118

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DEC 11 2003

OFFICE OF PETITIONS

In re Application of :
Zernickel et al. :
Application No. 10/643,209 : **DECISION GRANTING PETITION**
Filed: August 15, 2003 :
Attorney Docket No. ZERNICKEL-2 :

This is a decision on the paper entitled "REQUEST TO GRANT A FILING DATE OF AUGUST 15, 2003" filed on October 9, 2003, and supplemented on October 14, 2003, requesting that the above-identified application be accorded a filing date of August 15, 2003, rather than the presently accorded filing date of August 18, 2003, due to an interruption in the postal service. The request is being treated as a petition under 37 CFR 1.181.

The USPTO designated the interruption in the service of the USPS that occurred as a result of the power outage on Thursday, August 14, 2003, in the Northeast and Midwest United States as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). On August 15, 2003, a notice was posted on the USPTO website which indicated that correspondence that would have been filed with the USPTO under 37 CFR 1.10 during the USPS service interruption, but which was not filed due to the USPS service interruption, should be promptly filed after the termination of the interruption with a statement that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in "Express Mail" service. Thereafter, on August 19, 2003, a second notice was posted on the USPTO website which indicated that the USPTO had terminated the designation of this interruption in the service of the USPS as postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). This notice stated that correspondence that would have been filed with the USPTO under 37 CFR 1.10 on August 14, 2003, through August 16, 2003, but which was not filed due to the USPS service interruption, should now be filed with the USPTO under 37 CFR 1.10 with a statement that the correspondence would have been deposited with the USPS on August 14, 2003, August 15, 2003, or August 16, 2003, but for the designated interruption in the "Express Mail" service of the USPS. *See United States Postal Service Interruptions and Emergency Terminated*, 1274 Off. Gaz. Pat. Office 105 (September 16, 2003). This notice also made it clear that the provisions of 35 U.S.C. 21(a) and 37 CFR

1.6(e) apply only to postal service interruptions and emergencies and not to other exigencies such as the unavailability of a computer or the inaccessibility of an office or building other than a USPS facility.

The transmittal letter that was filed with the application on filing included a statement that "the correspondence would have been deposited with the United States Postal Service on Friday, August 15, 2003 if it were not for the interruption or emergency in 'Express Mail' service as a result of the power outage that affected New York City." However, the application was also accompanied by a paper entitled "COMMUNICATION" which indicated that the Empire State Building was sealed off on August 15, 2003 as a result of the power outage and that, since the offices of applicant's representative were located in the Empire State Building, he was unable to carry out the required submission of the application on August 15, 2003.

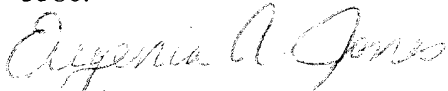
Thereafter, on October 9, 2003, the instant petition was filed. Petitioners' attorney, Henry Feiereisen, stated that an Express Mail envelope was prepared on August 14, 2003, for subsequent depositing with the USPS facility located in the Empire State Building and that the Express Mail envelope contained necessary papers for filing an application, including a complete specification, a self-addressed post card and an Information Disclosure Statement. According to petitioners' attorney, the transmittal letter was in the process of being printed out and contained a reference to the application date of August 14, 2003, but before the transmittal letter was printed out, the power outage occurred. Petitioners' attorney stated that the USPS facility located in the Empire State Building was inaccessible after the power outage and remained closed on August 15, 2003. Petitioners' attorney indicated that on Monday, August 18, 2003, the transmittal letter was changed to reflect the date of August 18, 2003. Petitioners' attorney stated that he "made two unsuccessful attempts on August 15, 2003 to reach the USPS (as well as its offices) to deposit the application papers." Petitioners' attorney again stated that "the application papers would have been deposited with the United States Postal Service on Friday August 15, 2003 but for the interruption or emergency in 'Express Mail' service as a result of the power outage that affected New York City."

On October 14, 2003, after a telephone communication between Mr. Feiereisen and the undersigned, a supplement to the petition was filed to clarify the situation. Petitioners' attorney stated that "upon leaving the offices on Thursday, August 14, 2003, he took the prepared Express Mail envelope, containing the papers for filing an application, including the complete specification, a self-addressed post card and an Information Disclosure Statement, except for the transmittal letter, with him, and tried to deposit twice the Express Mail envelope on August 15, 2003" and that both times he "was unsuccessful to reach the USPS to deposit the application papers."

In view of the circumstances, the petition is granted. No petition fee is required.

After the mailing of this decision, the Office of Initial Patent Examination will correct the filing date of the application to **August 15, 2003**, and mail a corrected filing receipt.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5586.



Eugenia A. Jones
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy